

03190.000100.



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
EDDIE F. RAY, III ET AL.)	Examiner: Julianna Nancy Harvey
	:	
Appln. No.: 10/766,504)	Art Unit: 3733
	:	
Filed: January 27, 2004)	Confirmation No.: 3501
	:	
For: BONE GRAFTS)	December 1, 2008

The Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION, UNDER 37 C.F.R. § 1.103(a), FOR
SUSPENSION OF PROCEEDINGS FOR SIX (6) MONTHS

Sir:

Applicants hereby petition, under 37 C.F.R. § 1.103(a), for suspension of proceedings in the above-identified patent application, as follows. The fee of \$200, required under 37 C.F.R. § 1.17(g), may be charged to our Deposit Account No. 06-1205.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

December 1, 2008
(Date of Deposit)

RONALD A. CAYTON
(Name of Attorney or Applicant)

Signature

December 1, 2008
Date of Signature

I. STATEMENT OF FACTS

A. The Subject Application

The subject application is directed generally to bone grafts, which in preferred embodiments may be used to fuse adjacent vertebrae in the spine to provide stabilization of the spinal column. All claims in the subject application, numbers 1 to 66, were presented for the purpose of provoking an interference with U.S. Patent No. 6,511,509 (Ford, et al.). More particularly, these claims were copied either identically or in modified form from Claims 1 to 10, 13, 16, 17, 20, and 22 to 25 of the Ford Patent.

B. The Restriction Requirement

A restriction requirement was made in an Official Action dated December 13, 2007; was made final in an Official Action dated May 30, 2008; and further prosecution has now been limited to Claims 1 to 4, 6, 7, 12, 13, 15, 20, 23, 26, 28, 31 to 35, 37, 38, 43, 44, 51, 54, 57, 65 and 66.

In response, Applicants are filing concurrently herewith a Petition, Under 37 C.F.R. § 1.144, for Review of Final Requirement of Restriction.

C. The Remainder of the Official Action Dated May 30, 2008

In addition to making final the prior restriction requirement, the Official Action of May 30, 2008, also objects to and rejects various claims of the subject case. A response to the May 30, 2008, Official Action is being filed concurrently herewith. One of these rejections is of all pending claims under 35 U.S.C. § 103 in view of various references.

II. ARGUMENT

To reiterate, all claims in the subject case were presented for the purpose of provoking an interference with the Ford Patent and were copied either identically or in


modified form from Claims 1 to 10, 13, 16, 17, 20, and 22 to 25 of that patent. The Official Action recognized at page 2 that Applicants claim an earlier priority date than does the Ford Patent. Therefore, implicitly the references applied to reject all claims in the subject case are equally applicable to all issued claims in the Ford Patent.

Accordingly, in further response to the May 30, 2008, Official Action and in order to determine the patentability of the claims to both Applicants and Ford, et al., Applicants are filing concurrently herewith a Request for Ex Parte Reexamination of all such claims in the Ford Patent.

Therefore, Applicants respectfully petition to suspend further action on the subject case for six (6) months to permit action by the PTO on Applicants' Request for Reexamination and for the PTO to make a consistent determination of patentability of the same or substantially the same claims to both parties.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,


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